

**PATENT****PENDING CLAIMS**

Please cancel claims 1-39, and substitute claims 40-51.

1 – 39 (Cancelled)

40. (New) In a code division multiple access communication system, a method comprising:  
determining a carrier to interference ratio (C/I) of a communication channel received at a receiver;

determining a rate of change of the C/I of the communication channel received at the receiver;

determining a minimum gain level of said communication channel based on said determined C/I;

determining a gain margin of said communication channel based on said rate of change of said C/I;

determining a gain level of said communication channel based on said minimum gain level and said gain margin for transmission of said communication channel to said receiver.

41. (New) The method as recited in claim 40 wherein a magnitude of said determined gain margin corresponds proportionally to a magnitude of said determined rate of change of said C/I.

42. (New) The method as recited in claim 40 further comprising transmitting said communication channel to said receiver at said determined gain level.

43. (New) The method as recited in claim 40 further comprising:  
determining a mobility level of said communication channel;  
determining whether said determined mobility level meets a mobility threshold, wherein said determining said gain margin of said communication channel is based on whether said determined mobility level meets said mobility threshold.

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44. (New) The method as recited in claim 40 wherein said transmission is in accordance with code division multiple access communication.

45. (New) In a code division multiple access communication system, an apparatus comprising:

a controller configured for:

determining a carrier to interference ratio (C/I) of a communication channel received at a receiver;

determining a rate of change of the C/I of the communication channel received at the receiver;

determining a minimum gain level of said communication channel based on said determined C/I;

determining a gain margin of said communication channel based on said rate of change of said C/I;

determining a gain level of said communication channel based on said minimum gain level and said gain margin for transmission of said communication channel to said receiver.

46. (New) The apparatus as recited in claim 45 wherein said determining a gain margin includes determining a magnitude of said determined gain margin proportionally to a magnitude of said determined rate of change of said C/I.

47. (New) The apparatus as recited in claim 45 further comprising a transmitter for transmitting said communication channel to said receiver at said determined gain level.

48. (New) The apparatus as recited in claim 45 wherein said controller is further configured for:

determining a mobility level of said communication channel;

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determining whether said determined mobility level meets a mobility threshold, wherein said determining said gain margin of said communication channel is based on whether said determined mobility level meets said mobility threshold.

49. (New) The apparatus as recited in claim 45 wherein said transmitter is configured for transmission in accordance with code division multiple access communication.